

NPDES Voluntary Permit Fee Incentive State Self-Certification Guidelines

Purpose

These guidelines are provided to assist states in developing their certifications for the permit fee incentive. The guidelines also provide a list of activities states may consider when calculating total NPDES program costs, as defined in the Permit Fee Rule.

Background: EPA's NPDES Voluntary Permit Fee Incentive Rule

Together, EPA and states have invested billions of dollars to establish and maintain adequate measures for the prevention, reduction and elimination of surface and ground water pollution. Today, state agencies are facing expanding responsibilities and increasing funding constraints. EPA is committed to supporting effective and efficient solutions to maintaining sustainable state water pollution control programs.

EPA's National Pollutant Discharge Elimination System (NPDES) Voluntary Permit Fee Incentive Rule (Permit Fee Rule) for Clean Water Act Section 106 Grants - Allotment Formula (under 40 CFR 35.162(e)) encourages states to voluntarily collect NPDES permit fees adequate to meet their program costs. The incentive is designed to help states move toward greater sustainability in the way they manage and budget for environmental programs and to shift part of the financial burden to those who benefit from NPDES permits. In addition, funding NPDES permit programs with the support of permit fees will allow states to use Section 106 funds for other critical water quality program activities.

EPA believes that the additional funding will allow states to build more sustainable water quality programs that are better equipped to address water quality problems. At the same time, there is no effect on any state's base Section 106 allotment resulting from the Permit Fee Rule. The incentive will only be funded if the overall state Section 106 allocation exceeds the FY 2008 funding level of \$171 million (base Section 106 funding does not include the monitoring incentive funds). In addition, the total value of the incentive pool will never exceed three percent of base FY 2008 Section 106 funding (or approximately \$5.1 million).

For some states, accounting for and documenting program costs will require additional effort. However, once states have established a process for documenting program and permit fee revenues, future year's certification should take significantly less time. In addition, the benefits of reviewing and documenting program costs extend beyond qualifying for a share of the incentive. These reporting requirements can help states to understand and document program costs and identify more opportunities to ensure program sustainability.

Qualifying for a Share of the Incentive

To qualify for this incentive under the Permit Fee Rule, states must collect fees that equal or exceed at least 75 percent of total state NPDES Program costs. Costs are defined as all permitting, enforcement, and compliance activities as will be explained later in this document. After EPA determines the number of eligible states, each state will be eligible to receive up to a full share of the set-aside amount. EPA will determine the amount of a full share by dividing the set-aside amount by the number of eligible states. The percent of a full share that each eligible state will receive will be determined by the following formula. Specifically:

- A state will receive 25 percent of a full share if that state has collected permit fees which equal or exceed 75 percent of total state NPDES program costs; or
- A state will receive 50 percent of a full share if that state has collected permit fees which equal or exceed 90 percent of total NPDES program costs; or
- A state will receive a full share if that state has collected permit fees which equal 100 percent of total NPDES program costs.

The rule also limits any one state's share of the incentive to no more than 50% of that state's total Section 106 allotment from the previous year.

Applying for the Incentive

Under the Permit Fee Rule, states must meet two eligibility requirements when applying for this incentive:

1. A state must be authorized by EPA to implement the NPDES program by the first day of the fiscal year (October 1) for which funds are appropriated by Congress.
2. Each year the state must submit a certification to EPA (to the attention of the Regional Administrator) indicating the state is certifying to receive a share of the incentive.
 - For FY 2009, the certification must be postmarked by November, 14, 2008.
 - For every year thereafter, the required certification must be postmarked by October 1.

States may choose to apply for the incentive during any year in which they are eligible. States that do not apply in FY 2009 or subsequent years are not precluded from applying for the incentive in any other years.

Self-Certification Requirements

There is no specified template or application format that states must use when developing and submitting the certification. In accordance with the Permit Fee Rule, the self-certification must at a minimum include the following components:

- The total NPDES state program costs from the most recently completed state fiscal year,
- The percentage of NPDES program costs recovered by the state through permit fee collections during the most recently completed state fiscal year,
- A statement that the amount of permit fees collected is used by the state to defray NPDES program costs for activities relating to permitting, enforcement, and compliance.
- A statement that state recurrent expenditures for water quality programs have not decreased from the previous state fiscal year, or a statement that a decrease in such expenditures is attributable to a non-selective reduction of the programs of all executive branch agencies of the state government.

NPDES Program Activity Costs

As part of the 2002 GAP analysis, the Environmental Council of States worked with state NPDES programs to identify the tasks required to implement permitting, enforcement, and compliance activities. EPA is providing this information, updated for Combined Animal Feeding Operations (CAFOs) and incorporating the Permit Compliance System in Appendix A: Tables 1 (Program Management), 2 (Permitting Activities), 3 (Enforcement Activities), and 4 (Compliance Activities). States may want to use this as a starting point when identifying their own program activities and costs. State NPDES programs vary in the types of activities the program is responsible for, the type and number of permits they issue, and the mechanisms through which they are funded. States are encouraged to work with their EPA Regional Section 106 or NPDES staff to determine the best approach to documenting state NPDES program costs.

Self-Certification Audits

States are not required to submit supplemental information beyond the statements described under “Self-Certification Requirements.” However, states are subject to audit by EPA to ensure the accuracy of the information provided in the self-certification and to verify the approach a state used to calculate program costs and permit fee revenue¹. Therefore, EPA recommends that states retain the documentation used to determine NPDES program activity costs, the total income generated from permit fees, and the portion of program costs defrayed by permit fees.

EPA Review

All certifications will be reviewed by the regional Section 106 staff, in consultation with the regional NPDES staff, prior to being forwarded to Headquarters. States will be notified of their incentive once the Section 106 grants have received final funding and it is determined if an incentive pool is available..

¹ One option for calculating NPDES program costs would be to use the protocol in 2 CFR 225 (formerly OMB Circular A-87) “Cost Principles for State, Local, and Indian Tribal Governments”.

Appendix A – Suggested Program Activities

Table 1: Program Management

Activity	Additional Considerations
1. Program Planning, Management, and Oversight	<ul style="list-style-type: none"> • Oversight of all aspects of the authorized Point Source Control Program (for example, oversight of Pretreatment and Biosolids Programs). • Clerical personnel and related activities. • Travel • Staff development and training • Public outreach • Other direct costs and overhead
2. Rule and Guidance Development, Review, and Revision	

Table 2: Permitting Activities

Activity	Additional Considerations
1. Fee Program Administration	
2. Data Management	<ul style="list-style-type: none"> • Data entry and processing <ul style="list-style-type: none"> ○ Data transfer and translation ○ Data organization, storage, and retrieval, and program support ○ Entering Discharge Monitoring Report (DMR) into Permit Compliance System (PCS) or Integrated Compliance Information System (ICIS) databases ○ Management of NPDES permit information and other data related to the permitting program ○ Entry of data received through electronic reporting and entry of hardcopy reports or information ○ GIS data management • Data system maintenance and improvement <ul style="list-style-type: none"> ○ Technical support to personnel and implementing system update • Implementation of PCS and ICIS-NPDES Policy <ul style="list-style-type: none"> ○ Collecting requisite data elements for universes of facilities specified in PCS/ICIS-NPDES policy and data transfer and reporting to PCS/ICIS-NPDES from direct and indirect users.
3. Permit Issuance	<ul style="list-style-type: none"> • Permit management and administration • Individual permit issuance, modification, or renewal for major and minor facilities, review, approval, and implementation of pretreatment programs, or for individual permits for CAFOs <ul style="list-style-type: none"> ○ Engineering plan review ○ Application mailing ○ Pre-permit conference ○ Application receipt, log-in, and completeness review ○ Permit modeling and re-modeling ○ Coordination with other programs ○ Development or revision of permit limits and other conditions ○ Negotiation ○ Drafting permit and factsheet, finalizing permit, maintaining permit ○ Public notice of permit issuance or renewal

	<ul style="list-style-type: none"> ○ Public hearing ○ Receipt, log-in, and response to comments ○ Permit issuance activities • Review, approval, and implementation of publicly owned treatment works (POTW) pretreatment programs • CWA 316 reviews (thermal discharges/cooling water intake structures) <ul style="list-style-type: none"> ○ Determining the information needed to support or refute 316(a) variance and controls to minimize impact from intake structure ○ Review of information submitted ○ Additional resources necessary to process NPDES permits for the power plants and other industrial facilities regulated by this provision. • Variance reviews (for example, reviews for variance authorized under CWA sections 301(g) and (m) for technology-based effluent limitations and CWA section 303 for water quality-based effluent limitations) • General permit development and renewal (For example: CAFOs, stormwater, and other general permits) <ul style="list-style-type: none"> ○ Authorization for coverage under general permit ○ Development or revision of permit limits and other conditions ○ Negotiation ○ Drafting permit and factsheet, finalizing permit, maintaining permit ○ Public notice of permit issuance or renewal and public hearing ○ Receipt, log-in, and response to comments ○ Filing notices of intent/registrations
4. Post-Permit Issuance Liaison with Enforcement	
5. Permit Appeals	<ul style="list-style-type: none"> • Appeals for individual permits • Appeals for general permits

Table 3: Compliance Activities

Activity	Additional Considerations
1. Review of DMRs	
2. Routine Compliance Inspections	<ul style="list-style-type: none"> • On-site inspections at major and minor facilities with individual NPDES permits <ul style="list-style-type: none"> ○ Comprehensive inspection ○ Sampling with inspection ○ Reconnaissance inspection ○ Enforcement follow-up inspection • Pre-treatment compliance inspections <ul style="list-style-type: none"> ○ POTWs with approved pretreatment programs ○ Inspections of state-regulated Categorical Industrial Users (CIUs) and Significant Industrial Users (SIUs) ○ Pre-treatment performance audit ○ CSOs/Sanitary Sewer Overflows (SSOs) Inspection ○ Sampling with inspection • General permittees (for example, CAFOs, stormwater, other general permittees) <ul style="list-style-type: none"> ○ Inspection ○ Sampling with inspection • Investigation of AFOs to support designation as CAFOs
3. Performance Audit Inspections (PAIs)	
4. Diagnostic Inspections	
5. Biosolids	<ul style="list-style-type: none"> • Report review <ul style="list-style-type: none"> ○ Annual biosolid characteristic reports

	<ul style="list-style-type: none"> ○ Other method of disposition reports ○ Annual land application reports • Inspection and approval of biosolid application sites <ul style="list-style-type: none"> ○ Field inspection and evaluation of new sites ○ In-office review of site applications • Compliance inspections
6. CAFOs	<ul style="list-style-type: none"> • Review <ul style="list-style-type: none"> ○ Annual reports ○ Nutrient management plans ○ Precipitation data ○ Model runoff conditions to identify potential discharges

Table 4: Enforcement Activities

Activity	Additional Considerations
1. Inspection and Complaint Investigation	<ul style="list-style-type: none"> • Inspection and Investigation for: <ul style="list-style-type: none"> ○ Individual permittees (for example, major and minor facilities with NPDES permits, CAFOs) ○ CIUs and SIUs regulated directly by the state for pre-treatment ○ General permittees (for example, CAFOs, stormwater dischargers, and other general permittees) ○ Non-permitted facilities
2. Violation Response	<ul style="list-style-type: none"> • Initial response • Follow-up response • Penalty administrative orders • Administrative orders • Civil referral development • Post-referral negotiation and conclusion of initiated cases, consent decree, or consent order negotiations • Criminal referral • Consent decree monitoring, consent order monitoring • Activities listed above may apply to the following: <ul style="list-style-type: none"> ○ Individual permittees (major and minor facilities with NPDES permits, CAFOs) ○ CIUs and SIUs regulated directly by the state for pre-treatment ○ General permittees (CAFOs, stormwater dischargers, and other general permittees)